



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL - 2 2014

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OFFICE OF WATER

Dear Mr. Robinson-Dorn:

On April 28, 2009, the Berman Environmental Law Clinic, on behalf of Friends of the Earth (FOE or Petitioner), sent a letter to the U.S. Environmental Protection Agency petitioning the Agency for rulemaking under Clean Water Act section 312 to (1) update the vessel sewage discharge performance standards found in 40 C.F.R. Part 140 for Type II Marine Sanitation Devices and (2) create strong monitoring, recordkeeping, and reporting requirements to ensure compliance with vessel discharge performance standards (Petition).

I am informing you that the EPA is denying the Petition at this time to revise the Type II MSD performance standards and to establish monitoring, recordkeeping, and reporting requirements. This denial fully and finally responds to the Petition and is the EPA's final action on the Petition. As discussed below, the Agency must prioritize its regulatory actions in light of limited resources and ongoing federal budget realities. For these reasons, the EPA at this time cannot commit to revising the Type II MSD performance standards or to developing MSD monitoring, recordkeeping, and reporting requirements under Clean Water Act section 312, and thus is denying the Petition.

This denial is not based on a determination as to whether the addition of sewage from vessels to waters of the United States, including the territorial seas, may cause or significantly contribute to water pollution. The EPA recognizes that inadequately controlled sewage from vessels can threaten receiving waters and human health. The Agency has allocated and continues to allocate resources to the management of vessel sewage (e.g., no discharge zones, the International Convention for the Pollution from Ships (MARPOL)). However, these on-going activities require fewer resources than are required to complete a notice-and-comment rulemaking.

Recognizing budget constraints and the need to prioritize activities, the EPA recently developed a long-term strategic plan to address vessel-related pollution and, in doing so, identified vessel sewage control as an area that requires attention. More information regarding the effectiveness of existing and the availability of new control measures for vessel sewage is important to facilitate and support the development of any regulatory action taken by the Agency. Working with FOE and other interested stakeholders, the EPA intends to assess the adverse impacts of vessel sewage through a series of actions focused on data gathering and information collection. The results of these actions may lead to a proposed rulemaking to revise the Type II MSD performance standards in the future.

I. Introduction

A. Statutory Provision

Clean Water Act section 312(b) provides that the EPA “shall promulgate Federal standards of performance for marine sanitation devices (hereafter in this section referred to as “standards”) which shall be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters from new vessels and existing vessels, except vessels not equipped with installed toilet facilities.” Section 312(b) further provides that the U.S. Coast Guard shall promulgate regulations (consistent with the performance standards) governing the “design, construction, installation and operation” of any marine sanitation devices on board such vessels.

B. Procedural History

On April 28, 2009, the Petitioner sent a letter to the EPA requesting that the Agency:

- (1) Update the vessel sewage discharge performance standards found in 40 CFR part 140 for Type II marine sanitation devices; and
- (2) Create strong monitoring, recordkeeping, and reporting requirements under section 312 to ensure compliance with vessel discharge performance standards.

On July 12, 2010, OWOW published a “Notice Seeking Stakeholder Input” in the Federal Register soliciting information on the universe of vessels operating MSDs and information on monitoring, recordkeeping, and reporting. The public comment period ended on November 9, 2010 and the EPA received approximately 20 comments. The feedback from the stakeholders was divided on whether to develop new standards; many of the comments that did not support new standards indicated that more data would be necessary to describe the effectiveness of current MSDs, the availability of new technology, and the associated environmental impacts from vessel sewage.

On April 30, 2014, the Petitioner filed a complaint with the United States District Court for the District of Columbia, alleging that the EPA had unreasonably delayed taking final action on the Petition and requesting that the court compel action under the Clean Water Act and the Administrative Procedure Act.

II. Summary of Petition

The Petition cites the goal of the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” The Petitioner’s goal is to prevent the continued discharge of inadequately treated sewage into navigable waters and to meet the Congressional goal of protecting our Nation’s waters. The Petition implies that Clean Water Act section 312(b)(1) requires the EPA to revise federal standards of performance for MSDs to require further treatment of sewage prior to release into or upon navigable waters from new and existing vessels.

The Petition notes that more than thirty years have passed since the EPA first promulgated vessel sewage discharge regulations and the EPA has not updated the standards to reflect the technological advances that have been made in treatment technology in the past thirty years. The Petition cites data and information regarding the large volume of sewage discharges from ships and the degradation of the marine environment from sewage due to the introduction of disease-causing microorganisms and excessive nutrients. In addition, the Petitioner asserts that sewage may endanger public health when discharged in the vicinity of shellfish beds based on the concentration of pathogens in the tissues of shellfish and other filter feeders making them unsafe for human consumption.

The Petition indicates that a wide range of advanced wastewater treatment systems are available and that most Type II MSD systems can be converted to meet more stringent effluent standards. Finally, the Petition asserts that requiring industry-wide performance standards to reflect the best practicable control technology currently available also will “serve as an economic stimulus by spurring innovation and encouraging the deployment of newer technology.”

III. Response to Requests

The Petitioner requests that the EPA update the vessel sewage discharge performance standards found in 40 C.F.R. Part 140 for Type II MSDs and create strong monitoring, recordkeeping, and reporting requirements to ensure compliance with vessel discharge performance standards. While the EPA has sought to be responsive in its consideration of the requests in the Petition, resource limitations and other competing priorities persist and have impeded that effort.

In the last five years, the resources for the EPA Water Programs have steadily dropped as a result of reduced appropriations, including the recent budget “sequestration.” Since 2010, the year after the EPA received the Petition, the Office of Water budget has been reduced by 17%, accompanied by staff reductions of 15%. In addition, the portion of the budget used to provide additional technical support through contracts has fallen by 26%. Specifically, the operating budget and staffing levels in the EPA's Office of Wetlands, Oceans, and Watersheds (OWOW) – the EPA office that would be responsible for developing the requested revisions to the MSD standards – have fallen by 30% and 8%, respectively.

Amid these resource challenges over the preceding four years, the Office of Water has been the lead EPA component responsible for over 40 key water-related actions including rulemakings, issuance of permits, petition responses and litigation support. Some of these actions were initiated prior to the Petition and some were subject to consent decrees with mandatory deadlines, leaving the EPA restricted in its capacity to address the remaining environmental priorities and the expenditure of discretionary budget amounts. Most notably, the Office of Water has focused significant resources, particularly in terms of staffing, on the action to define “waters of the United States,” issuance of the National Pollutant Discharge Elimination System General Permit for Discharges Incidental to the Normal Operation of a Vessel (Vessel General Permit), and an array of actions focused on managing the water pollution threats associated with stormwater. Even under the best circumstances, the EPA cannot undertake simultaneously all actions related to clearly determined priorities as well as those requested by the public, and so the Agency must prioritize efforts on certain actions while deferring others.

Despite resource constraints and the heightened need for advance planning to address priorities, the EPA has recognized and continues to recognize the potential for adverse environmental effects associated

with inadequately controlled sewage from vessels. Since receiving the Petition in 2009, the EPA published the “Notice Seeking Stakeholder Input” with regard to vessel sewage on July 12, 2010, and also engaged state and federal regulatory partners on a number of domestic and international sewage issues. The EPA has worked with states to develop approximately 20 separate actions (petitions/applications) to establish no discharge zones for vessel sewage under section 312(f) of the Clean Water Act. As of 2013, approximately 63,000 out of 163,000 eligible statutory square miles of coastal and non-coastal waters were protected by a no discharge zone. In addition, the EPA has led or participated in several vessel-related federal actions, including the issuance of the 2013 Vessel General Permit. The 2013 Vessel General Permit regulates the discharge of graywater commingled with sewage from commercial vessels. Internationally, the EPA participated in the review, development, and adoption of the 2012 Guidelines on Implementation of Effluent Standards and Performance Tests for Sewage Treatment Plants (MARPOL Annex IV) and is working with the U.S. Coast Guard on the development of the International Maritime Organization Polar Code, which would establish international standards for vessel sewage discharges in the Arctic and Antarctic regions.

Moving forward, the EPA is taking a common-sense, step-by-step approach to address the most significant vessel-related pollution through the most cost-effective measures. In 2012, OWOW began developing a long-term strategic plan to assess and address key ocean and coastal environmental issues, including vessel-related pollution. The strategic planning process took into account the EPA’s statutory authorities and responsibilities, stakeholder input, and recent budgetary restrictions for the purposes of committing to longer term priorities. This approach enables the EPA to focus resources on the key environmental threats associated with vessels, such as invasive species, oil, paints, and/or sewage.

The EPA understands that vessel sewage is an environmental concern for our stakeholders and partners in environmental protection, including the Petitioner. The comments received during the “Notice Seeking Stakeholder Input” public comment period and more recent direct communications with interested parties indicate to the EPA that there is insufficient information on the effectiveness of technology after installation and certification in the lab. The comments also raise questions about the availability of treatment technology for various sizes of vessels, variation in the adverse environmental impacts of vessel sewage, and the effectiveness of both existing and some of the newly established no discharge zones. For these reasons, the EPA is considering a few smaller, less resource-intensive information-focused activities for the next fiscal year (e.g., public listening sessions, technology review, the degree of enforcement, assessment of pump-out facility availability) to develop a better understanding of the key issues associated with vessel sewage management and ascertain where the EPA’s efforts will have the greatest impact in the service of human health and environmental protection. The EPA intends to engage with the Petitioner and other stakeholders during this process in an effort to develop a long-term sustainable solution to vessel sewage. Proposing revised Type II MSD standards may become part of the long-term strategic plan moving forward if and when other priority actions are completed and/or resources become available.

Agencies are generally given significant discretion to identify their priorities and direct where resources are devoted. At this time, in light of the constraints discussed above and EPA’s current efforts to manage and address vessel sewage, the EPA determines that the proper course of action relating to vessel sewage does not currently warrant the reallocation of resources from the Agency’s other water-related priorities and actions to justify granting the Petition.

IV. Conclusion

For the reasons discussed above, the EPA denies the April 2009 Petition requesting that the EPA update the vessel sewage discharges performance standards for Type II MSDs and create strong monitoring, recordkeeping, and reporting requirements under the Clean Water Act section 312 at this time. This is the EPA's final agency action on the Petition.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nancy K. Stoner', with a stylized, looping flourish at the end.

Nancy K. Stoner
Acting Assistant Administrator

